IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

CRP.No. 126 of 2001(F)

(AA.548/1997 of LAND TRIBUNAL, KANNUR
S.M.P.NO. 347/87 OF LAND TRIBUNAL, TALIPARAMBA.)

REVN. PETITIONER/RESPONDENT NO.1(A PARTY):
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1. PANAKKADAN VEETTIL KRISHNAN NAMBIAR,
KURUMATHUR AMSOM AND DESOM.
*(*DIED. LEGAL REPRESENTATIVES ARE IMPLEADED.)*

**ADDL. PETITIONERS 2 TO 5:*

2. T.K. NARAYANI, W/O. KRISHNAN NAMBIAR.

3. T.K. SREEDHARAN, S/O. KRISHNAN NAMBIAR.

4. SANDHA KUMARI, D/O. KRISHNAN NAMBIAR.

5. T.K. DIVAKARAN, S/O. KRISHNAN NAMBIAR.

(ALL ARE RESIDING AT THIDIKUTTIATT HOUSE,
KURNMATHOOR AMSOM DESOM,
P.O. KURUMATHOOR KARIMBAM VIA. KANNUR DISTRICT.)

(*ADDL. PETITIONERS 2 TO 5 ARE IMPLEADED AS LEGAL REPRESENTATIVES OF THE DECEASED PETITIONER AS PER ORDER DATED 24.10.2007 ON I.A.NO. 548 OF 2007)

BY ADV. SRI.T.A.RAMADASAN

RESPONDENTS/APPELLANT & RESPONDENT NO.2 (B PARTY):
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1. KAKKOTAKATH MEETHALE PURAYIL IBRAHIM,
S/O. LATE MUHAMMAD,
KURUMATHUR AMSOM, PANAKKAD DESOM,
P.O. KARIMBAM. (**DIED. LEGAL REPRESENTATIVES ARE IMPLEADED.)

2. K. NARAYANAN NAMBOODIRIPAD.
(DIED. NO LEGAL HEIRS ARE REQUIRED.)

3. STATE OF KERALA REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

**ADDL RESPONDENT NOS. 4 TO 10:*

4. THANEEREVEETTIL MARIYAM, W/O. IBRAHIM.

5. MUBEENA, D/O. MARIYAM.

6. SAMEERA, D/O. MARIYAM.

7. JABIR, S/O. MARIYAM.

8. SAJEER AHAMMED, S/O. MARIYAM.

9. SAKEER HUSSAIN, S/O. MARIYAM.

10. SWALIHA, D/O. MARIYAM.

(ALL ARE RESIDING AT KURUMATHOOR AMSOM, PANAKKAD DESOM, KARIMBAM P.O., TALIPARAMBA, KANNUR DISTRICT.)

(**ADDL. RESPONDENT NOS. 4 TO 10 ARE IMPLEADED AS LEGAL REPRPESENTATIVES OF DECEASED 1st RESPONDENT AS PER ORDER DATED 24.10.2007 ON I.A.NO. 543 OF 2007.)

BY GOVERNMENT PLEADER ADV. SHRI DILEEP.
ADV. SRI.S.V.BALAKRISHNA IYER
ADV. SRI.MILLU DANDAPANI
ADV. SRI.G.GIREESH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP.No. 126 of 2001(F)

ORDER ON C.M.P.NO. 250 OF 2001 IN C.R.P.NO. 126 OF 2001

DISMISSED.

18.12.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 126 OF 2001

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Dated this the 18th December, 2007

O R D E R

S.M.P.No.347 of 1987 on the file of the Land Tribunal, Taliparamba was initiated showing Krishnan Nambiar as the cultivating tenant (A party) and Narayanan Namboodiripad as the land owner (B party). The Land Tribunal passed an order dated 23.12.1987 ordering assignment of the right, title and interest of the landowner in favour of the cultivating tenant in respect of one acre of land in R.S.No. 116/1A1 of Chuzhali amsom and desom.

2. Challenging the order of the Land Tribunal, the first respondent herein, namely, Ibrahim filed A.A.No. 548 of 1997 before the Appellate Authority. Before the Appellate Authority, it was contended by Ibrahim that himself and his brother Hamza had obtained purchase certificate in respect of an extent of 2 acres of land in R.S.No. 116/1A1 as per the order in S.M.P.No.295 of 1986 on the file of the Land Tribunal, Taliparamba. Therefore, according to Ibrahim, the order in favour of Krishnan Nambiar in S.M.P.No. 347 of 1987 was not legal and proper.

3. Since there was no contest before the Land Tribunal, the Land Tribunal did not pass an order considering the merits of the contentions put forward by the cultivating tenant. When a third party files an appeal against such an order, and there is serious contest between the parties in respect of title and possession, normally, the Appellate Authority would remit the matter to the Land Tribunal affording an opportunity to both the parties to adduce evidence. Instead of doing so, the Appellate Authority held that after the assignment of an extent of 2 acres in favour of Ibrahim and

Hamza , the petitioner in the S.M.P., namely, Krishnan Nambiar, who is said to be the manager of Jenmi, fraudulently obtained an order in his favour. This finding is unsustainable. Without considering the evidence and without ascertaining the actual possession and identity of the land, the Appellate Authority was not justified in holding that Ibrahim and Hamza are the real cultivating tenants in respect of the land in question, only on the basis that they had obtained purchase certificate earlier. This is a dispute which is to be considered on the merits, after affording opportunity to both the parties to produce documents and to adduce evidence. This is also a matter for proper verification by the authorized officer. Payment of revenue and payment of rent to the Jenmi and other facts and circumstances of the case, are all matters to be considered in a case of rival claims by two sets of persons. Only on the basis that Ibrahim and Hamza got purchase certificate earlier, the Appellate Authority was not justified in holding that Krishnan Nambiar was not entitled to assignment and that the Land Tribunal passed the order erroneously. In the judgment passed by the Appellate Authority, it is stated thus:

> *"Another point to be noted is that the present respondent has not filed any appeal against the Ext.A1 order so far and that means the assignment of the land in favour of the appellants is admitted by the first respondent."*

4. It is submitted by the learned counsel for the petitioner that Krishnan Nambiar filed an appeal against the order in S.M.P.No. 295 of 1986 with an application for condonation of delay. The appellate authority had allowed that application. Challenging that order, the legal representatives of Ibrahim filed Writ Petition (C)No. 15957 of 2006. That Writ Petition was dismissed on 23.01.2007. That means the order

in S.M.P.No. 295 of 1986 has not become final and the appeal filed against that order is pending before the Appellate Authority. Even otherwise, the order in S.M.P.No. 295 of 1986 is not binding on Krishnan Nambiar, as he is not a party to that proceeding.

5. In the facts and circumstances of the case, I am of the view that the Appeal against S.M.P.No. 347 of 1987 also should be considered by the Appellate Authority on the merits afresh , after affording an opportunity to both the parties to adduce evidence and to produce documents. I am not remanding the case to the Land Tribunal since several Land Tribunals have been abolished and it would be difficult for the parties to appear before the Land Tribunal in these circumstances. The Appellate Authority having all the powers of the Land Tribunal, shall afford an opportunity to both the parties to adduce evidence and to produce documents. If the Appeal against the order in S.M.P.No. 295 of 1986 is pending before the Appellate Authority, A.A.No. 548 of 1997 and the appeal arising out of S.M.P. No. 295 of 1986 shall be disposed of together by the Appellate Auhority.

The Civil Revision Petition is accordingly allowed . The judgment of the Appellate Authority is set aside, The matter is remanded to the Appellate Authority for fresh disposal in the manner indicated above. No order as to costs.

K.T. SANKARAN,
JUDGE.

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